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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Amendment of the Commission's Rules
Regarding a Plan for Sharing the
Costs of Microwave Relocation

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

WT Docket No. 95-157
RM-8643

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COMMENTS OF AT&T WIRELESS SERVICES, INC.

AT&T Wireless Services, Inc. ("AT&T") hereby submits its comments on the Further Notice of Proposed Rule Making adopted in conjunction with the Commission's First Report and Order in the above-captioned proceeding.¹ AT&T supports the Commission's efforts to "accelerate the development of PCS in the D, E, and F blocks by speeding up the negotiation process and creating additional incentives for incumbents to enter into early agreements."² To this end, AT&T urges the Commission to consider eliminating the voluntary negotiation period altogether for non-public safety incumbents in these blocks and to shorten the voluntary negotiation period for public safety incumbents from three years to two years. AT&T also supports the Commission's proposal to permit microwave incumbent participation in the cost-sharing plan adopted in the First Report and Order. Adoption of these measures

¹ Amendment of the Commission's Rules Regarding a Plan for Sharing the Cost of Microwave Relocation, First Report and Order and Further Notice Proposed Rule Making, WT Docket 95-157, RM-8643, FCC No. 96-196 (rel. April 30, 1996).

² Id. at ¶ 96.

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will help to expedite the provision of PCS services, and thus promote competition in the markets for wireless and other telecommunications services.

I. The Commission Should Eliminate the Voluntary Negotiation Period for the C, D, E and F Blocks

In the First Report and Order, the Commission clarified its microwave relocation rules in a number of respects in order to "expedite the clearing of the 2 GHz band and the introduction of PCS to the public, while protecting the rights of incumbents."³ These clarifications will help "promote an efficient and equitable relocation process,"⁴ and represent some progress in addressing the difficulties that PCS licensees face in negotiating with incumbent microwave licensees to clear interfering 2 GHz incumbents.

These rule changes did not, however, address the chief difficulty confronting PCS providers in the microwave relocation process: some incumbent microwave licensees have exploited the voluntary period by using the threat of delay to extract higher relocation fees. The Personal Communications Industry Association and the Cellular Telecommunications Industry Association have detailed many examples of such conduct by incumbent licensees.⁵

AT&T remains concerned that there are insufficient regulatory incentives for good faith negotiations by incumbent microwave licensees, particularly during the voluntary negotiation period. The need for the voluntary negotiation period at all is questionable at best, since incumbent licensees are adequately protected by the Commission's requirements

³ Id. at ¶ 9.

⁴ Id.

⁵ Comments of the Cellular Telecommunications Industry Association, WT Docket No. 95-157, at 8 (filed Nov. 30, 1995); Comments of the Personal Communications Industry Association, WT Docket No. 95-157, at 11-15 (filed Nov. 30, 1995).

that PCS licensees must bear all costs of relocation, and ensure that substitute facilities are comparable to the preexisting facilities in communications through-put, system reliability and operating costs.⁶

The Commission now has the opportunity to expedite the deployment of PCS services in the D, E, and F blocks by eliminating the voluntary negotiation period and requiring incumbents to negotiate in good faith. As the Commission notes, bidding in the D, E, and F blocks has not yet commenced, offering a fresh canvas for the adoption of rules that will ensure the appropriate incentives for concluding relocation negotiations as soon as possible.⁷ Incumbents are on notice of the requirement to negotiate, and there is no purpose served by delaying the fulfillment of that requirement.

Indeed, the public interest would be best served by accelerating these negotiations. The smaller D, E, and F blocks are likely to be used to introduce a variety of applications in addition to the mobile services which have generally been provided by the first PCS licensees. Expediting provision of these types of services is consistent with longstanding congressional and agency goals of fostering the competitive provision of telecommunications services generally⁸ and wireless services in particular.⁹

⁶ First Report and Order at ¶¶ 27-34.

⁷ Id. at ¶ 95.

⁸ See Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) ("1996 Act"); H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 1 (1996) ("Conference Report") (objective of legislation is to "provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition").

For its part, the Commission has long sought to eliminate barriers to wireless competition in the telecommunications marketplace. Earlier this year, for example, the agency commenced a rulemaking proceeding on LEC-to-CMRS interconnection, noting that changes in compensation arrangements are necessary if CMRS services "are to begin to compete directly against LEC wireline services."¹⁰ Previously, in establishing rules for broadband PCS, the Commission acknowledged that PCS services might include advanced wireless replacements for ordinary telephones.¹¹

In light of these objectives, AT&T submits that the Commission should eliminate the voluntary negotiation period for the D, E and F block licensees.¹² Such a change will

⁹ Cf. 47 U.S.C. § 332(a)(3) (one goal of regulatory scheme for private wireless services is to "encourage competition and provide services to the largest feasible number of users").

¹⁰ Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, Notice of Proposed Rulemaking, CC Docket No. 95-185, CC Docket No. 94-54 at ¶ 12 (released Jan. 11, 1996).

¹¹ Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order, 8 FCC Rcd 7700, 7712 (1993).

¹² While not a bidder for C block licenses, AT&T also supports eliminating the voluntary negotiation period there as well. Given the uncertainty over the identity of the winning bidders on this block, see Emergency Petition for Waiver of Deadline for Submission of Down Payment for the Broadband PCS C Block Auction filed by BDPCS, Inc., DA No. 96-811 (released May 20, 1996), there are not yet the kind of settled expectations that led the Commission to reject proposals to eliminate the voluntary negotiation period for the A and B blocks. Expediting the negotiation of microwave relocation agreements on all of the frequency blocks will best serve the interests of the public in the "rapid, efficient" deployment of PCS services. See 47 U.S.C. § 151(a).

For the same reasons, AT&T continues to urge the Commission to expedite the relocation of 2 GHz licensees on the A and B blocks. See Comments of AT&T Wireless Services, Inc., WT Docket No. 95-157 (Nov. 30, 1995), at 11-16. AT&T was the second-largest bidder in the Commission's A and B band auctions for PCS spectrum, and has paid

clarify the incentives of incumbents and emerging technology licensees alike, and best serves the goal of expediting service to the public. If the Commission decides not to eliminate the voluntary negotiation period, however, it should shorten that period as proposed in the Further Notice.

II. The Commission Should Permit Incumbent Participation In its Cost Sharing Plan

AT&T supports the Commission's proposal to permit microwave incumbent participation in the Commission's cost-sharing plan, even before a microwave incumbent has agreed with a specific PCS licensee to relocate its facilities. AT&T agrees that "cost-sharing serves the public interest because (1) it will distribute relocation costs more equitably among PCS licensees, and (2) it will promote relocation of entire microwave systems at once which will benefit microwave incumbents."¹³ AT&T believes that adoption of the proposal in the Further Notice to permit incumbent microwave participation in the relocation cost-sharing plan would further these goals, with little risk of abuse.

The cost-sharing mechanism adopted by the Commission in the First Report and Order is available only where there is an agreement between a specific PCS licensee and a microwave incumbent to relocate the incumbent's facilities. As the Commission recognized, moreover, it is not reasonable to expect an individual PCS licensee to pay to relocate all of the microwave links of an incumbent user, while that particular licensee may only be affected

the U.S. Treasury more than \$1.6 billion for the right to provide PCS services in markets with more than 107 million inhabitants. Its ability to bring these services to market in a timely fashion depends in part on the ability to clear its PCS frequencies expeditiously.

¹³ Id. at ¶ 71.

by a subset of the user's microwave links.¹⁴ While these limitations to the cost-sharing process are understandable, AT&T believes that incumbent microwave should be encouraged to consider early relocation of their links, even where they have not received a specific request from a PCS licensee.

Permitting incumbent microwave users to plan for and implement relocation of their entire systems at the earliest possible time and recoup their costs through the cost-sharing mechanism, as the Commission has proposed, will very likely speed clearance of the 2 GHz band. Incumbent users will be able to redesign their systems on a comprehensive, rather than piecemeal basis. Allowing incumbent microwave participation in the plan will also minimize transaction costs associated with multiple partial negotiations with different PCS licensees at different times.

AT&T believes that the potential for abuse of this process by incumbent microwave users is limited. The cost-sharing plan already incorporates limitations on the costs of moving individual microwave links, which should be sufficient to address any concerns over "goldplating."¹⁵ Moreover, the dispute resolution procedures adopted under the cost-sharing plan should suffice to address any remaining abuses.

¹⁴ Id. at ¶ 35-38.

¹⁵ See id. at ¶¶ 27-28.

CONCLUSION

For the foregoing reasons, the Commission should eliminate the voluntary negotiation period for C, D, E and F block licensees, and should permit microwave incumbent participation in its cost-sharing plan.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Cheryl S. Flood, do hereby certify that on this 28th day of May, 1996, I caused a copy of the foregoing "Comments of A&T Wireless Services, Inc." to be sent by first class mail, postage prepaid, or to be delivered by messenger (*) to the following:

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